

1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MISSOURI
3 WESTERN DIVISION

3 IAN POLLARD, on behalf of himself)
4 and all others similarly situated,)
5 Plaintiffs,)Case No.
6 vs.)13-CV-00086-ODS
7)13-CV-00086-ODS
8 REMINGTON ARMS COMPANY, LLC, et al.,)
9 Defendants.)

10 TRANSCRIPT OF MOTIONS HEARING
11 BEFORE THE HONORABLE ORTRIE D. SMITH
12 FEBRUARY 4, 2015
13 KANSAS CITY, MISSOURI

14 APPEARANCES

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1 WEDNESDAY, FEBRUARY 4, 2015

2 THE COURT: We set this time for a hearing on the
3 parties' joint motion for preliminary approval of the amended
4 complaint in Ian Pollard v. Remington Firearms Company, LLC.
5 The case number is 13-CV-00086.

6 I see some familiar faces and some unfamiliar faces,
7 so I will allow counsel to introduce themselves to the court
8 and the record at this time.

9 MR. SHERK: Your Honor, John Sherk, Shook, Hardy &
10 Bacon here in Kansas City, Missouri. Joining me is my
11 colleague Dale Wills from the Swanson Martin firm in Chicago,
12 Illinois.

13 MR. WILLS: Morning, Your Honor.

14 THE COURT: Good morning.

15 MR. ROBINSON: Your Honor, I'm Jon Robinson, Bolen,
16 Robinson & Ellis, Decatur, Illinois. I have with me Richard
17 Arsenault of Neblett, Beard & Arsenault in New Orleans.

18 THE COURT: Welcome. There are a number of items
19 that I will suggest that are worthy of consideration this
20 morning. First and foremost is why the proposed settlement
21 should receive preliminary approval by the court and what
22 makes it fair, reasonable, and adequate.

23 Secondly, there were several items mentioned in this
24 court's order of December the 11th, Document No. 70, where I
25 had some initial concerns, and I would ask that those be

1 addressed by counsel this morning in connection with their
2 remarks.

3 Thirdly, the joint motion recites that there are no
4 objections, and, of course, yesterday I received
5 correspondence from Mr. Belk who did express opposition to the
6 settlement.

7 Is Mr. Belk here this morning?

8 MR. BELK: Yes, I am, Your Honor.

9 THE COURT: All right. Mr. Belk, I do not intend
10 for this to be an evidentiary hearing this morning. In light
11 of the fact that you have traveled some distance to be here, I
12 will give you a few minutes to make some remarks and express
13 your opposition if you choose to do that.

14 Then I will ask the attorneys to address Mr. Belk's
15 concerns in their remarks. At this stage I am not necessarily
16 approving the settlement. This is a preliminary hearing in
17 which the parties seek only preliminary approval, and
18 following that, all of the members of the class -- the
19 attorneys will attempt to notify and contact all of the
20 members of the class to be sure that the class understands
21 what's going on here.

22 And then at some time in the future, most likely
23 this year, there will be another hearing at which time the
24 parties will ask me to finally approve, and at that point in
25 time if you choose to be sworn and take the witness stand and

1 offer testimony, I'll hear that testimony.

2 MR. BELK: I appreciate that, Your Honor. I will
3 wait until that hearing.

4 THE COURT: All right. For the record, Mr. Belk, I
5 have read your letter and the attachments to that letter.
6 Additionally, late yesterday the parties filed a response to
7 your letter, and I have also read that letter and viewed the
8 exhibits attached to that letter.

9 All right. Who would like to go first?

10 MR. SHERK: Your Honor, John Sherk. I would be
11 happy to start the proceeding.

12 THE COURT: Go right ahead.

13 MR. SHERK: Your Honor, I kind of sketched out a
14 game plan for this morning, and the good news is I think my
15 game plan pretty much lines up precisely with yours.

16 I'd like to give the court a little bit of
17 background about what this case is about, how we got here, how
18 we arrived at this settlement by way of introduction, and I
19 think Mr. Robinson probably will have a couple thoughts from
20 the plaintiffs' vantage point in that regard as well.

21 Mr. Arsenault this morning is prepared to talk about
22 the Rule 23 criteria and how, based on the submissions of the
23 parties and the arguments of counsel here today, the criteria
24 for preliminary approval are met.

25 Finally, Mr. Arsenault and I will deal with the

1 court's five questions that were contained in the court's
2 December 11th order. I would then like to present the court
3 with a minor clarification to the definition of class B that
4 we think that will be helpful. We've got some slightly
5 modified dates for notice, fairness hearings, some suggestions
6 based on the date of today's hearing and the publications
7 which will need to be spun out over the course of the summer.

8 And, finally, I believe that Mr. Robinson can
9 respond to Mr. Belk's letter.

10 So why are we here? Well, this hearing is the
11 culmination of two years of litigation and some very vigorous
12 negotiation and mediation, Your Honor. I'm really very
13 pleased to be here to present this settlement. I think this
14 is a strong settlement. It's fair, reasonable, and adequate
15 to say the least. I think that Remington's providing real
16 value to the class members.

17 This started a few years ago when Mr. Robinson,
18 Mr. Arsenault, and their colleagues filed four class action
19 lawsuits. One was in Miami, Florida; one was here in Kansas
20 City, Missouri, before Your Honor. There was another one in
21 Washington in Seattle in front of Judge Coughenour and then a
22 final one in Montana.

23 All of these cases announced a similar theory and
24 sought similar class action relief. They contended that the
25 Walker trigger mechanism of the Model 700 Remington rifle

1 utilized a component part known as a trigger connector, that
2 that was defectively designed, and it was prone to have an
3 accidental discharge without the trigger pull.

4 It's important to keep in mind, Your Honor, that
5 these are economic loss cases. No claims for personal injury
6 or property damage have been made. None of those claims are
7 being released under this settlement agreement.

8 One thing I must emphasize as counsel for Remington,
9 though, is these were hotly-contested cases. Make no mistake,
10 there was no lay down liability here, Your Honor. There were
11 disputes about the alleged defect, which Remington denies,
12 disputes about the existence of any economic losses
13 whatsoever. There were also important individualized defenses
14 that Remington was ready to put forth if the case is then
15 going on, and, frankly, Your Honor, Remington's position is
16 there's nothing wrong with the Remington Model 700 rifles.
17 They think they're safe and they think they work well.

18 And in fact, as Remington stated in its brief, and I
19 quote, in past personal injury lawsuits, neither Remington nor
20 the plaintiffs' firearms experts have ever been able to
21 duplicate an accidental firing without a trigger pull on a
22 rifle in proper working condition. So, again, to say these
23 were hotly-litigated cases is to put it mildly.

24 We engaged immediately in motion practice, in some
25 discovery, and I think in conversations with my plaintiffs'

1 colleagues here, we decided that if these cases were ever
2 going to be resolved, we had to take a break, and we had to
3 see if we could work something out. So despite Remington's
4 position that the guns were safe and that they worked fine and
5 that there was nothing wrong with them, we decided to see if
6 we could put this issue behind it and craft something that
7 worked for the class members, the putative class members, and
8 for Remington.

9 So after, you know, quite a bit of analysis about a
10 mediator, we settled on a gentleman named John Perry. I
11 believe he's in Baton Rouge, Louisiana. He ended up being a
12 wonderful mediator for us, very skilled, very astute. He dug
13 into the issues.

14 Mr. Robinson assembled a crew of highly-experienced
15 plaintiffs class action litigators from across the country,
16 not just these two gentlemen sitting at counsel table today,
17 but also Mark Lanier in Houston, Charlie Schaffer in
18 Philadelphia, John Climaco in Cleveland just to name a few,
19 Your Honor. So there was a formidable group involved in these
20 mediations. I think we had at least four or five in-person
21 mediation sessions, innumerable telephone conferences.

22 To say that these were bareknuckle negotiations,
23 again, is to put it mildly. They were spirited. A lot of --
24 a lot of very difficult issues were worked through under the
25 guidance of the mediator, John Perry, very much arm's length,

1 very much conflict, brought together this resolution.

2 So we entered into a basic structure, Your Honor,
3 and we agreed at that time that the X-Mark Pro mechanism would
4 be an appropriate retrofit for the Walker Fire Control, which
5 was the subject of the lawsuits.

6 Then what happened, Your Honor? Well, we discovered
7 that there was a problem with the X-Mark Pro. Here's what
8 happened, there was a gentleman that put a video on YouTube
9 demonstrating an unintentional firing of the X-Mark Pro.
10 Essentially when the safety was moved to the off or to the on
11 position, in a very narrow temperature range band, the gun
12 would fire.

13 Well, the company took immediate action and I mean
14 immediate. They got the gun back. They inspected it. They
15 were unable to have this unintentional firing at room
16 temperature, at 30 degrees, at negative 20 degrees, but when
17 you got in this narrow band of temperature range of about 10
18 degrees, the company was able to duplicate it.

19 So with that in mind, Mr. Wills and I literally got
20 on a plane and we flew down to meet with Mr. Arsenault and Mr.
21 Lanier, plaintiffs' lawyers. We alerted them immediately of
22 this issue and of Remington's determination to as quickly as
23 possible institute a voluntary recall of which the company did
24 to figure out what was wrong and to make it right. And that's
25 exactly what happened.

1 The company engaged in an exhaustive analysis of the
2 X-Mark Pro trigger mechanism. The company, and I'm
3 simplifying things, Your Honor, but the company essentially
4 found out that in certain circumstances too much of a bonding
5 agent called Loctite was squeezed into the trigger mechanism,
6 and it oozed into places within the mechanism where it
7 shouldn't have been.

8 Well, when that happened, the agent could literally
9 touch the trigger and the safety such that at that narrow
10 temperature range, putting the safety to the off position
11 would be sufficient to create a trigger pull. A rare
12 instance. No instances of personal injuries do we know about
13 at all, and the recall has been going on since, I believe,
14 April 11th of last year.

15 But, more importantly, the company figured out the
16 problem. It instituted measures at the factory such that that
17 could never happen again. We involved Mr. Arsenault and
18 Mr. Robinson's experts. We invited them to the factory. They
19 took a look at the issue. They took a look at the specialty
20 cleaning inspection and testing process that the company had
21 engaged in.

22 They also looked at the new way that the X-Mark Pros
23 were manufactured and, more importantly, assembled so that
24 they could assure themselves that the new X-Mark Pro
25 mechanism, as it was assembled, was safe and reliable, and the

1 court has expert declarations on file now by both parties
2 attesting to that. So with that bump in the road resolved, we
3 continued on with the process.

4 I'd like to talk a little bit now about the benefits
5 of the settlement because I think the benefits are very real,
6 very tangible, and if you compare -- if you took that
7 complaint that was filed in Pollard and you compare it with
8 the settlement that we've crafted here that we're talking
9 about today, you'll see a striking similarity in overlap. I
10 mean in essence the thrust of the complaint was we want you to
11 retrofit those guns, and the company said, yes, we're going to
12 do it. And that's what -- and that's what -- do we have it?
13 We've got a little slide here that I want to show the court.

14 There we go. This is a schematic, Your Honor, I
15 hope you can read it, of the way that this settlement is laid
16 out. Our proposed settlement, class A we call the trigger
17 connector class. The bulk of it is in the middle. That's the
18 Model 700s. The 715, 710s, 770s are in the pink. The much
19 older guns, the 600s, 721s, those are in blue.

20 And then class B, as the court is aware, is the XMP
21 recall class which we will fold into this proposed settlement
22 if and when the court were to grant preliminary approval.

23 This next slide, Judge, slide 2, shows the breakdown
24 of the model firearms implicated in the settlement, and the
25 court can see that the retrofitting component of this proposed

1 settlement encompasses over 90 percent of the guns that are
2 involved, so that's, again, just a graphic illustration of the
3 fact that we crafted a settlement that really meets the
4 demands of Mr. Robinson and Mr. Arsenault in filing these
5 cases.

6 We also have a component, Your Honor, of refund.
7 There were certain Remington rifle owners who chose to
8 retrofit their Walker Fire Controls with X-Mark Pros. Some of
9 these people did that at their own cost, and I'm not sure
10 exactly why, Your Honor, but some people were charged
11 differently than others. Some people were charged 50 percent
12 of the amount. Some people were charged less. Some people
13 were charged as much as \$119. That's the maximum that any
14 individual ever had to pay who would fall in this category.

15 So that's why we capped that amount there. It's --
16 and it's in no way a limitation. It's just the most that the
17 company ever paid, and the company will pay these people back.
18 We'll write them checks. That's our plan here.

19 Finally, Your Honor, as part of the settlement
20 benefit, we are in the process of preparing and are well along
21 in preparation of a safety instructional DVD. This will be --
22 it's professionally produced, high production values. We
23 think it will be of real interest and value to gun owners in
24 terms of the Ten Commandments of Firearm Safety, also the
25 cleaning of the rifles, taking care of them. I think that

1 will be a worthy benefit.

2 So that kind of outlines where we are today, and I'd
3 like to turn over the floor to Mr. Robinson for additional
4 comments from the plaintiffs' perspective.

5 THE COURT: Thank you, Mr. Sherk.

6 Mr. Robinson, in your remarks if you can touch on
7 the differences between the original complaint and the first
8 amended complaint, that might be helpful to the court.

9 MR. ROBINSON: Thank you, Your Honor.

10 THE COURT: Uh-huh.

11 MR. ROBINSON: The centerpiece of this settlement is
12 clearly the replacement of the Walker Fire Control, the
13 retrofitting of these with the X-Mark Pro, and out of that, of
14 course, has arisen the question about the X-Mark Pro and
15 whether or not it's a suitable replacement. We believe we
16 have the answer for that, and we have filed documents to that
17 effect. I actually will be handling and would like to handle
18 the court's questions if I could.

19 THE COURT: Sure.

20 MR. ROBINSON: Mr. Sherk has, I believe, adequately
21 described the details of the settlement. Your Honor had five
22 questions. The first one was whether or not we should have
23 additional subclasses. We have not proposed any additional
24 subclasses, Your Honor, beyond class A and B, and we do not
25 believe that Rule 23 requires any further subclasses. We say

1 that because we do not think that there are any divergent
2 interests among the treatment of the owners of the rifles
3 within the subclasses or within the classes A and B.

4 This is true for both because the difference in the
5 relief, we believe, among these groups is justified by the
6 different circumstances. The court has obviously discretion
7 under Rule 23(c)(5) to create subclasses when it's
8 appropriate, and there's several decisions that conclude that
9 subclasses are necessary, however, and appropriate only when
10 members of the class have divergent interests.

11 John Coffee, a professor at Columbia Law Review,
12 made the following comment: If subclassing is required for
13 each material legal or economic difference that distinguishes
14 class members, the balkanization of class action is
15 threatened. Such a fragmented class might be unmanageable.
16 It certainly would reduce the economic incentives for legal
17 entrepreneurs to act as private attorneys general, and it
18 could be extremely difficult to settle any of these cases if
19 subclasses -- if a subclass and its attorney had an incentive
20 to hold out for more.

21 The Eighth Circuit decisions also indicate that a
22 conflict of interest requiring a subdivision of classes is not
23 created simply because some class members receive more than
24 other class members. In *Petrovic v Amoco Oil Co*, 200 F.3d
25 1140, at 1146, the Eighth Circuit said in denying an

1 objector's argument that a conflict of interest was created
2 because some class members would receive more than others
3 where there were different circumstances. We believe that the
4 different circumstances in this case would not -- among the
5 class members would not require any subclasses.

6 THE COURT: There are three subcategories in class
7 A?

8 MR. ROBINSON: That is true. In this case, though,
9 Your Honor, there are -- there is little difference in the
10 remedy among the class A members.

11 THE COURT: The difference between the first
12 subcategory is that members of the class can either take or
13 ship their firearms. The second class, members must ship
14 their firearms. And the third category receives monetary
15 compensation of \$12.50 in one instance and \$10 in the other.

16 MR. ROBINSON: I think I can explain that. You want
17 to --

18 MR. SHERK: Maybe I could pick off one or two of
19 these, Your Honor, speaking for Remington because I've got
20 maybe a little bit more of an inside track about why it is the
21 people -- that some people can take their guns to a Remington
22 authorized repair center and others need to ship them back to
23 the factory.

24 The fact is with the 700s, Seven's, Sportsman 78s,
25 673s, those guns are engineered such that the Walker can be

1 taken out and the X-Mark Pro can pretty much just be dropped
2 in. Very little modification is required there, and that's
3 why Remington decided to the extent possible that it would
4 spread out the work to these authorized repair centers. And
5 that then alleviates, you know, a glut of firearms waiting to
6 be retrofitted at the factory, and instead master gunsmiths at
7 these RARCs, Remington Authorized Repair Centers, can do the
8 work.

9 They're especially trained to do it. Remington
10 provides them with the new triggers. It's faster for the
11 customers. They get better service. It's a little bit more
12 expensive for Remington, but it gets the job done quickly.

13 The issue with the 710s, 715s, and 770s is there's a
14 little bit more work that's got to go into the process of
15 dropping in the X-Mark Pro. Parts have got to be put in the
16 receiver of the gun such that the X-Mark Pro fits in there,
17 you know, with the exacting specifications that the company
18 requires.

19 To get that -- believe me, we looked at whether or
20 not we could do that at RARCs, Your Honor, and if we would
21 have been able to do it, if we could have figured out how to
22 do it, we would have done it, but we weren't able to come up
23 with a way that it would be fast and efficient and economical
24 to get that done. So we thought that we'll send this category
25 of gun back to the factory. They'll be ready to handle them.

1 They'll do it there.

2 Can we look at this next slide, slide two. Yeah.

3 You'll see that those are comparatively not that
4 many guns, so I think we can do this at the factory. The
5 company takes care of the shipping, the cost of that, supplies
6 the boxes, so I think it's relatively painless for class
7 members.

8 Jon, all apologies for injecting.

9 MR. ROBINSON: No problem. They know more about
10 those issues than we do, I think, at this point.

11 THE COURT: Mr. Robinson, maybe the third category
12 is one more suitable to be addressed by you in any event.
13 These older firearms are not going to be repaired. They get
14 either \$10 or \$12.50 in either the voucher or coupon. It
15 looks like a voucher to me, but you may choose to address
16 that.

17 If the guns are defective, why are they still out
18 there?

19 MR. ROBINSON: Your Honor, we believe that, first of
20 all, there are very few of those. Most of those guns are at
21 least 30 -- the newer ones of the groups are 30 plus years
22 old. The older ones average probably 50 or 60 years old.

23 If they've lasted this long, if they're still being
24 used and a risk, a safety risk, they are probably going to
25 continue to be okay. They're probably going to continue to be

1 safe.

2 They cannot be repaired practically just from what
3 we know. They cannot be retrofitted, as like the other 700s
4 can be, and so when we look at -- the court -- we've called
5 them a voucher. We believe that they are like cash. They are
6 transferable. Remington has a website with lots of products
7 on it that have a value of -- within the values of these
8 vouchers.

9 Remington will allow them to be combined with other
10 offers, with other vouchers, with other credits and premiums,
11 so they are like cash and, again, can be transferable. We
12 believe it's a real value for these gun owners.

13 In addition, because they are so old, there are
14 problems, I think, timing wise in making claims. Statutes of
15 limitations may come -- become a problem.

16 The other --

17 THE COURT: The settlement agreement ignores the
18 statute of limitations?

19 MR. ROBINSON: It does, it does. That's true.

20 The settlement does not waive a right for personal
21 injury or property damage, though, so if there is an issue
22 with one of the 600s or the 715s or the early 770s --

23 THE COURT: The problem with that approach,
24 Mr. Robinson, is somebody actually has to get hurt. If the
25 guns are defective and they're still out there, there is the

1 possibility that somebody is going to be severely injured or
2 killed by one of those weapons.

3 Was there a discussion about a repurchase or a
4 buyback of those weapons?

5 MR. ROBINSON: We discussed this honestly, Your
6 Honor, many times during the mediation and both before and
7 since. The -- Mr. Sherk may have comments from their
8 perspective, but I believe that from the plaintiffs' point of
9 view that this is a reasonable resolution for those folks.
10 They are getting warnings as well as the Ten Commandments of
11 Gun Safety.

12 Mr. Sherk, do you --

13 MR. SHERK: Maybe I can address the court's
14 questions from Remington's perspective. Let me start with the
15 question you posed about five minutes ago, Your Honor, and
16 that's what's the difference between the original Pollard
17 complaint and the amended Pollard complaint, and I think the
18 court was probably referring to the fact that we brought in
19 additional models of firearms that were not originally
20 implicated in the Pollard complaint.

21 And I'll tell you what, that was arrived at in the
22 crucible of the mediation and negotiation largely at the
23 insistence of Remington because, Your Honor, we wanted to
24 bring in, if we were going to do this, we wanted to bring all
25 the models of firearms possible that had either the Walker

1 Fire Control or the trigger connector, the component that the
2 plaintiffs allege is the design defect.

3 So we brought in the 710s, the 715s, and the 770s.
4 We also brought in these much, much older guns. Your Honor,
5 these guns, many of these guns, as Mr. Robinson said, are 50,
6 70 years old. Some of them are 30 and 40 years old. As to
7 those guns, as Mr. Robinson said, they cannot be readily
8 retrofitted.

9 In fact, there has -- to do that, to drop in an
10 X-Mark Pro requires massive changes to the stock and barrel.
11 It ruins the integrity of the gun to the extent that they are
12 valuable because they're old. It's expensive and time
13 consuming, and about the court's concern about the triggers,
14 you know, Your Honor, again, Remington thinks there is nothing
15 wrong with these guns and that they fire appropriately and
16 that they're safe. And, you know, to the extent there would
17 have been an issue, one would think presumably we would have
18 learned about it by now given the age of these guns.

19 I want to think about the court's BPA decision here
20 too when we talk about the value of the relief because in that
21 decision, the court recognized that one thing you've got to
22 look at is what is the real value of these claims versus, you
23 know, what you could get if they were litigated individually
24 versus the settlement amount. And here, Your Honor, I
25 respectfully put it to the court that these claims would not

1 survive motions based on statute of limitations and other
2 defenses.

3 You know, the longest statute of limitations I
4 believe is 15 years. These guns long -- are much older than
5 that rather. These are economic loss claims. They would have
6 expired a long time ago. Moreover, if these claims were
7 litigated either individually or on a proposed class action
8 basis, the plaintiffs would, frankly, encounter a world of
9 problems.

10 I mean, these cases are complex. There's difficult
11 proof problems. Reliance and materiality, as this court
12 mentioned in its BPA decision, would be implicated.
13 Scientific issues would be implicated about the trigger
14 mechanisms involved. Again, we've got defenses. So we
15 believe that the individuals, the gun owners in this category
16 who get to keep their guns, which are essentially heirlooms at
17 this point, also get a voucher, and these are properly
18 considered in our view, Your Honor, to be vouchers rather than
19 nothing.

20 And in doing this, our thought for Remington, Your
21 Honor, was we've got this category of claimants -- of
22 individuals. We don't think any claim they would have would
23 be viable, but in a gesture of customer satisfaction, brand
24 loyalty, the company thought it would be good to bring them
25 into the fold. So that was the impetus for doing that.

1 Again, Your Honor, we think given all these factors, that
2 they've had decades of use of these guns, claims not worth
3 anything or very little, difficult to prosecute, that this is
4 a fair, reasonable, and adequate settlement for this slim
5 category of older guns.

6 As you'll see, Your Honor, we're talking about a
7 universe -- about 600,000 guns as compared to, you know, five,
8 six million other guns. As Mr. Robinson intimated, this was a
9 hotly-negotiated component of the settlement. I think
10 everybody ended up in a good place with it.

11 To reiterate, these vouchers are transferable.
12 Unused portions revert to the owner. They won't expire. They
13 can be used on a lot of Remington products without the
14 expenditure of any additional money, and in fact if you look
15 at Remington's website, Your Honor, there are about 300 items
16 that you can get for under ten bucks.

17 I mean, in fact \$10 is the threshold category, and
18 there's tons of stuff. I mean, I was just looking actually
19 before I came over here this morning. You can get, you know,
20 a trigger block gun lock for 6.95, 7.95. There's specials
21 every now and then. They could even be cheaper than that.

22 You can get cleaning supplies. I found one for
23 Remington silicone treated gun socks. Believe it or not, Your
24 Honor, these are big socks that go over rifles to protect
25 them. There's Remington LED bore lights which are kind of a

1 cool little thing, 6.95.

2 So there's all kinds of things you can get for those
3 vouchers, Your Honor, that I think are valuable. They go to
4 safety. They go to gun maintenance. And there's other things
5 too, other components as well if a customer wanted to use, you
6 know, this voucher to trick out their firearm in some form or
7 fashion.

8 Finally, as we said earlier, these individuals do
9 get the instructional safety DVD. I mean, think about what a
10 70 year old gun owner's manual would have looked like, you
11 know, printed, probably pretty spartan. They're getting a
12 high-production value DVD about safety, gun maintenance that I
13 think is of value, Your Honor.

14 So based on all that, we thought it was a fair,
15 reasonable, and adequate program for this group.

16 MR. ROBINSON: Judge, you also asked about class B,
17 and, again, we do not believe there's any substantive
18 difference or conflict between those who get a new X-Mark Pro
19 trigger and those who have already paid Remington for one and
20 are going to get a refund of up to \$119, depending on what
21 they paid.

22 They all will have new triggers at no cost to them,
23 and, as I said at the beginning, this -- the centerpiece of
24 this entire settlement is the fact that at no cost -- it's not
25 a common fund settlement. We won't be parsing out a

1 percentage of the purchase price for a new trigger. They're
2 going to be getting the triggers 100 percent covered, no
3 shipping, no handling, no labor cost, and we believe after all
4 the years and history with the Walker triggers and those like
5 them, the ones that have the connectors, that's a tremendous
6 benefit that anyone who can, we need to replace those.

7 The second question you asked, Your Honor, is to
8 explain why the owners of the Model 700, the model -- the
9 Sportsman 78 and the 673 could choose to take them to a
10 dealer, and I think Mr. Sherk has already explained that from
11 Remington's point of view. We -- there's a significant
12 difference in the technology and the work that has to be done
13 to justify that.

14 Your third question related to the coupons. We've
15 discussed that. We think that these vouchers are not coupons.
16 They are basically like cash. They're transferable.
17 Mr. Sherk has just described how many products are available,
18 and, once again, the guns that those vouchers apply to are the
19 721, the 722, and the 725 rifles, which are going to receive a
20 \$10 voucher, are all over 50 years old. Many much older. The
21 Model 600, 660, and the XP-100 rifles are all over 30 years
22 and some much older than that.

23 Once again, regarding safety, we believe that the
24 guns that are still there, the universe is much smaller for
25 those than it is for the Model 700s, that they are not likely

1 at this point to be a problem if they've lasted this long to
2 the extent that they are still being used. I suspect that
3 most of them are probably in a closet somewhere if they even
4 still exist.

5 But one final note is, as Mr. Sherk mentioned, they
6 do not have to give up their guns. People these days don't
7 want to give up their guns for any reason, and so they're
8 getting basically cash plus the notice plus the safety ten
9 commandments.

10 Your fourth question dealt with the long form
11 notice, the claim forms, the settlement website. I think
12 Mr. Sherk probably will respond more to this, but -- and
13 they're better equipped to answer that question. However, we
14 understand on behalf of the plaintiffs that Remington will
15 have a link on its website to the settlement website, and,
16 once again, Mr. Sherk I think or Mr. Wills will address that
17 further.

18 Your fifth question related to opt-outs.

19 MR. SHERK: I think that's mine, Jon.

20 MR. ROBINSON: Pardon?

21 MR. SHERK: That's probably one I ought to cover.

22 MR. ROBINSON: I'd be glad for you to do that. From
23 my perspective we join with the request to have that kept
24 either in camera or not to be disclosed. We believe that the
25 defendants in this case are in good faith and that they want

1 to settle this.

2 We know, however, that in this day and age there are
3 those who might just attempt to recruit enough folks to object
4 to any settlement regardless of how good the terms were, and,
5 once again, we believe the terms of this settlement, the
6 centerpiece are 100-percent relief for the Walker and
7 Walker-like connector triggers.

8 I'm prepared at this point to save some time to deal
9 with Mr. Belk's objections. Mr. Arsenault will be handling
10 the Rule 23 matters. It's up to you if you are willing to
11 hear me out on that.

12 THE COURT: Let's postpone that. I have, as I've
13 said, read the written materials. None of it is sworn except
14 your affidavits that are attached to yours, but if I conclude
15 that it's necessary to go into that, we'll do it at the
16 hearing for final approval.

17 MR. ROBINSON: Okay. Thank you, Your Honor.

18 MR. SHERK: Excuse me, Your Honor. Let me follow up
19 on a couple of Mr. Robinson's responses about questions four
20 and five.

21 Remington's website absolutely will contain a link
22 to the settlement documents, and, Your Honor, frankly, in
23 working through issues of the website, we've joined hand in
24 hand with plaintiffs' group. They've done many, many, many of
25 these, and also we've relied a great deal on our notice

1 administrator who is also handling the claims, a company
2 called Angeion. What everyone has recommended is you get a
3 link to -- on the Remington website. It will go right to the
4 settlement website. There will be all these settlement
5 documents in full, and that way class members get a uniform
6 vision of what it is that the settlement is about.

7 The message is controlled. They're not seeing
8 different messages on different plaintiffs' lawyers' websites
9 and on Remington's websites, no editorials. They get the real
10 scoop in a way that's professionally managed by the claims
11 administrator.

12 THE COURT: And I assume the link will be
13 prominently displayed on Remington's website?

14 MR. SHERK: You bet, Your Honor.

15 And believe me the claims administration claim form
16 website process has been exhaustively engineered. We're
17 putting the finishing touches on it right now. In fact,
18 there's a meeting scheduled for this afternoon and tomorrow,
19 so the process is well under way and highly orchestrated.

20 Going to the question about the blow-up provision,
21 as Mr. Robinson said, it was agreed to by the parties. I
22 would say that Remington is committed to this settlement.
23 It's expended a considerable, significant amount of time,
24 resources, and energy and manpower to try to pull this off.

25 Frankly, the company wants to put these economic

1 loss claims behind it once and for all. It also wants to
2 demonstrate a commitment to its customers. It wants to foster
3 brand loyalty and customer satisfaction, and that's a part of
4 the settlement too, Your Honor. Make no mistake about it.

5 The provision about walking away from the settlement
6 is premised upon good faith, which we have. There's also a
7 provision in the settlement, Your Honor, which indicates that
8 if the parties disagree about how the settlement provisions
9 should be interpreted, we're obligated to go to John Perry,
10 the mediator, who is at the center of putting together this
11 compromise. So that's another layer of checks and balances
12 that we would need to go through before we would ever walk
13 away, assuming the plaintiffs didn't agree with our view of
14 it.

15 The Manual for Complex Litigation at Section 21.631
16 recognizes that these provisions are often used and that they
17 are -- they are of value. That's how we got to the decision
18 to put the provision in the agreement. If the court wants
19 more information, more detailed thought about what it would
20 take in terms of a percentage or a figure, I would echo
21 Mr. Robinson's request to do that in camera.

22 What we don't want to do here today is set a
23 benchmark, a figure or something where a third-party objector
24 could seize upon that, try to amass an inventory of opt-outs,
25 and create either a competing class action or go to

1 Mr. Arsenault and Mr. Robinson and say, You need to deal with
2 me on this. We think that would be disruptive to the
3 settlement, and that's why we would want to talk to you about
4 it in camera because I think actually those issues have
5 nothing to do with why someone would opt out or not. So it's
6 not a lack of transparency. It's just knowing the rules of
7 the road here, Your Honor, and being cognizant of the factors
8 that can come into play when you settle a large, big deal
9 class action like this one.

10 THE COURT: Okay.

11 MR. SHERK: I'll turn it over to Mr. Arsenault to
12 talk about Rule 23.

13 THE COURT: Mr. Arsenault.

14 MR. ARSENAULT: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. ARSENAULT: I'll be addressing this for the
17 conditional certification of the settlement classes and the
18 preliminary approval of the proposed class, so the first topic
19 with Your Honor's permission will be the conditional
20 certification of the settlement classes. What we're seeking
21 here, Your Honor, is class certification pursuant to Rule
22 23(b)(3).

23 As Your Honor knows, Rule 23 governs the issue of
24 class certification, whether it's a litigation or a settlement
25 class. Of course, with a settlement class, the court need not

1 determine whether a trial would present intractable management
2 problems.

3 As Your Honor is aware, and I hesitate to go through
4 some of these rules, I've read Your Honor's opinions and I
5 know you're painfully aware of them. So I'll go through them
6 quickly. But the -- you know, we're charged with the burden
7 of demonstrating to the court that 23(a) has been satisfied.
8 That includes numerosity, members of the proposed class are so
9 numerous, that joinder is impracticable; commonality, common
10 issues of law or a fact exist among the class members;
11 typicality, the claims of the proposed class representatives
12 are typical of the claims of the absent class members; and
13 adequacy, that the proposed class representatives will fairly
14 and adequately represent the interests of the classes. And,
15 Your Honor, we respectfully suggest that all four elements
16 have been satisfied here.

17 In terms of numerosity, it's estimated that each of
18 the proposed settlement classes will have tens of thousands of
19 members, and that clearly satisfies the numerosity
20 requirement.

21 In terms of commonality, the central issue, as
22 Mr. Robinson indicated, in this litigation is whether the
23 allegedly defective trigger mechanisms resulted in economic
24 loss to the class members. That's common to all the class
25 members.

1 In terms of typicality, the class representatives'
2 claims are typical to the claims of the proposed class
3 members. They are uniform and arise from the same alleged
4 conduct of the defendants.

5 And, finally, Your Honor, in terms of adequacy, now,
6 the named plaintiffs and class members are equally interested
7 in demonstrating the alleged defective nature of the trigger
8 mechanisms, and the named plaintiffs are committed to
9 obtaining appropriate repairs or compensations for the
10 repairs. Additionally, the named plaintiffs have demonstrated
11 a commitment to prosecuting this matter by supplying central
12 factual information concerning legal claims, making their
13 firearms available for inspections and testing, and willing to
14 testify if necessary at depositions or at trial.

15 Additionally, Your Honor, the requirement of
16 representation by qualified counsel has also been met. The
17 proposed class counsel have extensive experience handling
18 complex class actions and have demonstrated a willingness to
19 vigorously pursue the class actions as outlined in the
20 declarations that I submitted along with Mr. Jon Robinson.

21 Likewise, Your Honor, Rule 23(b) has been satisfied
22 here for purposes of certifying the settlement classes. More
23 particularly, the questions of the law or fact common to class
24 members predominate over any questions affecting individual
25 members, and a class action is superior to other available

1 methods for fairly and efficiently adjudicating the
2 controversy. So those are the predominance and superiority
3 requirements under 23(b)(3).

4 More specifically, Judge, in connection with
5 predominance, the requirement is met where there exists
6 generalized evidence that proves or disproves an element on a
7 simultaneously -- simultaneous classified basis. Here we have
8 common questions that do in fact predominate over the
9 individual issues since the liability issues are common for
10 all the class members. The claims for each class member
11 center on the design, the manufacturer, the marketing, and the
12 sale of the allegedly defective firearms.

13 In terms of superiority, class treatment here is
14 superior, is a superior form of litigation because it
15 addresses the rights of the claimants who individually would
16 be without the strength collectively to litigate these claims.
17 In this case the expenses and burden of the individual
18 litigation makes it impracticable for members of the proposed
19 class to seek redress individually.

20 Moreover, seeking redress through individual
21 litigation might not occur until trial and appellate remedies
22 have been exhausted. In contrast, this proposed settlement
23 provides class members with real benefits under a
24 straight-forward claims framework while preserving their due
25 process rights.

1 Turning now, Your Honor, to the preliminary approval
2 of the proposed settlement, Rule 23(e) provides the guidance
3 here, and it governs the settlement of class actions, and
4 although the procedure for approval is not specifically
5 articulated under Rule 23(e), we know from the Manual for
6 Complex Litigation and interpretative jurisprudence that
7 essentially what we have here is a two-step process.

8 First step is to determine whether the settlement
9 appears to fall within the range of reasonableness. The
10 second step is to determine whether the proposed notice plan
11 meets due process so class members can know about this and
12 appear at the final fairness hearing, as Your Honor indicated
13 at the beginning of this hearing, where there will be a full
14 airing of any issues.

15 There's a variety of instructive jurisprudence, some
16 of which Your Honor has created, with regard to how to assist
17 courts in making this analysis. There's a presumption of
18 fairness, which exists, Your Honor, if certain criteria are
19 met, and those have in our opinion been met in this particular
20 case. Those include, number one, that a settlement is reached
21 through arm's length bargaining, and the plaintiffs and the
22 defendants are here along with the declaration of the mediator
23 -- the mediation team actually, John Perry and Randy Ellis,
24 establish unquestionably that this was hard fought and at
25 arm's length.

1 Number two, that the investigation and discovery
2 have been efficient to allow -- efficient enough to allow
3 counsel and the court to act intelligently. We think that
4 certainly has been the case with the two years of active
5 litigation.

6 Number three, counsel is experienced in similar
7 litigation. Our declarations speak to that, Your Honor.

8 And that the percentage of objections is small, and,
9 as Your Honor indicated early in this proceeding, thus far we
10 have one objection.

11 Three other quick controlling, instructive themes
12 with regard to this process, Your Honor. The court need only
13 determine whether the proposed settlement is within the range
14 of possible approval at this juncture. A class action
15 settlement, and Your Honor has noted this in earlier cases, is
16 a private contract negotiated between the parties at Rule
17 23(e) and requires the court -- and the jurisprudence talks
18 about the court intruding. I hesitate to use that word. I
19 don't think the court is intruding. It's carrying out its
20 part of the three obligations and Rule 23 obligations. But
21 the jurisprudence speaks to the court intrude on the private
22 consensual agreement, and that intrusion is merely to ensure
23 that the agreement is not the product of fraud or collusion
24 and that taken as a whole, it's fair, adequate, and reasonable
25 to all concerned.

1 And lastly, Your Honor, there's a strong judicial
2 policy favoring settlements, particularly in class actions
3 where substantial resources can be conserved by avoiding the
4 time, costs, and rigor of prolonged litigation.

5 And there's been some dialogue, Your Honor, with
6 regard to mediators and the negotiations, and with regard to
7 mediators, courts additionally consider whether the settlement
8 was reached with the experience and the assistance of a
9 mediator. And here the negotiations were overseen by an
10 experienced mediation team. John Perry has impeccable
11 credentials. He's been appointed by Article III judges in a
12 variety of MDLs and mass torts to serve as a special master.
13 In my opinion he's widely recognized as one of the top
14 mediators in the country, and he watched this unfold in
15 realtime.

16 There was a notice of the settlement that was filed
17 in this case on July 2nd, 2014, and, again, the parties have
18 only received one objection.

19 So in conclusion, Your Honor, we believe that this
20 is an excellent settlement, and we thank the court for its
21 consideration.

22 THE COURT: Thank you, Mr. Arsenault.

23 MR. SHERK: Please the court, I've got just a couple
24 follow-up issues while I've got your attention. I alluded
25 earlier, Your Honor, to a slight clarification of the class

1 definition for class B. It's up on the monitor here.

2 We just want to make it abundantly clear who is in
3 or out of the class. I think that the agreement did that, but
4 I -- in an abundance of caution and for the purpose of making
5 sure that we don't create any confusion, we propose to add
6 this clause to the class B definition that's agreed to by the
7 plaintiffs' counsel.

8 That will require, Your Honor, that we file some
9 amended documents, including a revised amended complaint,
10 motion, settlement agreement, long form, and possibly short
11 form notices and proposed order. We would hope to do that by
12 this Friday if that sat well with the court.

13 THE COURT: That will be fine.

14 MR. SHERK: Okay. In addition, Your Honor, as I
15 mentioned earlier, we are continuing to work very thoroughly
16 with Angeion, the claims administrator. They'll take yet
17 another look at the long form and short form notices, and if
18 there's anything additional we need to do to make it as simple
19 and as clear as possible, we'll get that done as well. We'll
20 get those things on file.

21 Finally, based upon today's hearing, the date of it,
22 and then what we know about getting publications, getting the
23 different media publications set so that we can get the
24 notices orchestrated correctly, we would respectfully propose
25 these dates. There's no magic, but they do generally fit what

1 we think would be the right kind of timeframes for the
2 appropriate media plan, giving people enough time to learn
3 about and respond to the proposed settlement, and then have a
4 final approval hearing.

5 THE COURT: Okay. Anything else from you,
6 Mr. Sherk?

7 MR. SHERK: That covers it all for me, Your Honor.

8 THE COURT: Thank you.
9 From the plaintiffs?

10 MR. ARSENAULT: No, Your Honor.

11 THE COURT: All right. So all present will know, I
12 intend to take the motions under advisement and will enter a
13 written order fairly quickly. I'm going to ask the spectators
14 now to leave the courtroom so I can talk to the attorneys
15 about the blow-up provision in the agreement. With that, you
16 are excused.

17 (The remaining portion of the transcript is filed under seal
18 in Document No. 83.)

19 REPORTER'S CERTIFICATE

20
21 I certify that the foregoing pages are a correct
22 transcript from the record of proceedings in the
23 above-entitled matter.

24 _____
25 Date

Registered Merit Reporter